

REMARKS

Restriction is only proper if the identified groups are independent or distinct. The burden is on the Office to provide reasons and or examples to support its conclusion that the identified groups are independent or distinct. M.P.E.P. § 803.

The Office has characterized the relationship between Groups I, II and III as being independent and patentably distinct. As support for this assertion, the Office has asserted that these groups have acquired a separate status in the art as shown by their different classification because of their recognized divergent subject matter. Applicant respectfully submits, however, that the different classifications of the subject matter of the claims in Groups II and III are improper and that the Office has failed to meet its burden necessary to sustain the Restriction Requirement. Applicant respectfully submits that the gel of Group I is very closely related to the gels of Group II and Group III and it is believed that it would be most efficient and correct to examine all three groups at the same time especially as the relevant prior art will likely be the same for these groups. Applicant therefore respectfully traverses the restriction requirement and respectfully requests reconsideration and withdrawal of the same.

Moreover, Applicant respectfully submits that Claim 1 is a linking claim and acts to prevent restriction of Claims 9, 10, and 11, even if otherwise divisible. MPEP § 809. Specifically, Applicant respectfully submits that Claim 1 is a genus claim and Claims 9, 10, and 11 each represent a different species that are linked by Claim 1. MPEP § 809.02. Claim 1 is inseparable from Claims 9, 10, and 11 and therefore prevents the restriction of Claims 9, 10, and 11. MPEP § 809.03. Claim 1 provides a polymeric gel composition comprising, in part, a hydrophobic liquid. Claim 9 provides that the hydrophobic liquid is a perfume. Claim 10 provides that the hydrophobic liquid is an insecticide or an insect repellent. Claim 11 provides that the hydrophobic liquid is N,N-Diethyl-m-toluamide. Claims 9, 10, and 11, therefore, define

specifically different disclosed embodiments of the present invention. That is, each of these claims recites limitations that are not disclosed in the other claims. MPEP § 806.06; See also Ex parte Muench, 70 USPQ 92 (Bd. App. 1948). Claim 1 encompasses each of these dependent claims or species. Moreover, Claim 1 does not include a material element additional to those recited in the species claims. Claim 1 further comprehends within its confines the organization covered in each of the species. MPEP § 806.04. Applicant therefore submits that, because Claim 1 is a genus claim and Claims 9-11 each disclose different species linked by Claim 1, restriction is improper in the present application. Similarly, Applicant respectfully submits that species Claim 15 is linked via generic claim 14 and restriction thereof improper. Rather, an election of species pursuant to MPEP § 809.02(a) is the more appropriate course of action. Applicant therefore respectfully requests reconsideration and withdrawal of the restriction requirement regarding Claims 1-16 and suggests that an election of species be required instead.

The Examiner is encouraged to contact the undersigned at 816-460-2516 to discuss the foregoing. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct any such fees from Deposit Account No. 19-3140.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL

By 

Lara Dickey Lewis, Reg. No. 48,161
P.O. Box 061080
Wacker Drive Station, Sears Tower
Chicago, IL 60606-1080
816-460-2516 (telephone)
816-531-7545 (facsimile)

ATTORNEYS FOR APPLICANT



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